

THE TOWN OF CASCADE

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Mayer

William Peterson

Council

Murry Moore; David Gifford; Robert Reissing; Del Voss

Senate Judiciary Committee
Helena, Mt.

March 11, 2011

Chairman and Committee;

We, the Council for the Town of Cascade, would like to address the following issues in regards to your consideration in repealing the Medical Marijuana Act.

Our first obligation is to the residents in our community. Our youth are already at such a disadvantage, as our town is primarily mid to low income. Some of these kids don't have the means to participate in sports and extra-curricular activities. Now that marijuana is so readily available – and legal with a card – we are experiencing an increase in usage among our youth. These kids have gained access by having a family member with a card or a friend with access to someone with a card. The Town of Cascade is spending our resources trying to enforce the moratorium that it passed in June of 2010.

This brings us to the next point. At the same time the Town of Cascade passed the moratorium, it also revoked the registration of the caregiver, Leon Tirums, who was running his business in Cascade. It was based on the fact that the Medical Marijuana Act states, "This chapter does not permit...the use of marijuana by a caregiver...Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use." (Attached and high-lighted: Section 5. Section 50-46-205; (1) (b)...(3)). This amendment was provided to me by Roy Kemp, the DPHHS employee that issues cards for both patients and caregivers. (attached email). Mr. Tirums sued the Town of Cascade saying that he can, in fact, be both, per Mr. Kemp. If the employees that are supposed to be informed of the procedures aren't following the guidelines set by you, then how can law enforcement do their jobs? The Town cannot enforce this ordinance due to all of the confusion of this act.

We've heard talk of how much revenue taxing the medical marijuana industry could bring into Montana. Short term, probably true. But long term, how much money are we going to spend on treatment and hospitalization for those cardholders who are addicted and/or overdosing? There are no studies now because this is so new. So the argument by the caregivers and patients that this is NOT addictive is also not proven. How can we not fall back on what we know with the tobacco industry and all of the studies done there? There is absolutely NO science in what these caregivers do! They are not doctors, and have no schooling. They grow pot, not medicine.

Lastly, how can we be guaranteed that the Federal Government will not step in and withdraw funding to our schools and highways? When you passed the law of no speed limits in Montana, the Federal Government threatened to take away our highway funding. They already DO NOT allow cardholders to grow or use marijuana in federal housing. The CDBG funding is federal money and there are some stipulations being reviewed at this time, as far as using them on housing for medical marijuana patients.

With all of the questions surrounding the Medical Marijuana Act, it's time to repeal. Protect our youth, our communities and our funding!

Sincerely,

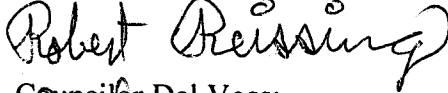
William R. Peterson, Mayor:



Councilor Murry Moore:



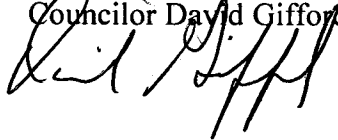
Councilor Robert Reissing:



Councilor Del Voss:



Councilor David Gifford:



Jodie Campbell

From: Kemp, Roy [rkemp@mt.gov]

Sent: Tuesday, June 22, 2010 3:47 PM

To: 'townofcascade@3riversdbs.net'

<http://data.opi.mt.gov/bills/2009/billpdf/SB0325.pdf>

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AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. It Except as provided in Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of

the following:

- (i) cachexia or wasting syndrome;
- (ii) severe or chronic pain;
- (iii) severe nausea;
- (iv) seizures, including but not limited to seizures caused by epilepsy; or
- (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or
- (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- (3) "Department" means the department of public health and human services.
- (4) "Marijuana" has the meaning provided in 50-32-101.
- (5) "Medical use" means:
 - (a) the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;
 - (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or
 - (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.
- (6) "Paraphernalia" has the meaning provided in 45-10-101.
- ~~(6)~~(7) "Physician" means a person who is licensed under Title 37, chapter 3.
- ~~(7)~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- ~~(8)~~(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.
- ~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.
- (b) The term does not include the seeds, stalks, and roots of the plant.
- ~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the

qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that the~~ the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the~~ minor:

- (i) consents to the medical use of marijuana by the minor;
- (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver; and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

(b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.

(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

- (a) the name, address, and date of birth of the qualifying patient;
- (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
- (c) the date of issuance and expiration date of the registry identification card; and
- (d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and

are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;
or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 4. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A ~~qualifying patient or caregiver~~ person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the

purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

~~Section 50-46-205, MCA, is amended to read:~~

"50-46-205. Limitations of Medical Marijuana Act. ~~(1) This chapter does not permit~~

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

~~(b) the use of marijuana by a caregiver; or~~

~~(b)(c)~~ the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

- (a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
- (b) an employer to accommodate the medical use of marijuana in any workplace.

~~(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."~~

Section 6. Section 50-46-206, MCA, is amended to read:

"50-46-206. Affirmative defense. Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) (a) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or a caregiver; or

(b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

- END -

I hereby certify that the within bill,
SB 0325, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 325
INTRODUCED BY PERRY

AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

ORDINANCE 571

AN ORDINANCE TO IMPOSE A TEMPORARY MORATORIUM ON THE REGISTERING, LICENSING, OPENING, AND OPERATING, OF ANY ESTABLISHMENTS THAT ACQUIRE, POSSESS, CULTIVATE, MANUFACTURE, DELIVER, TRANSFER, TRANSPORT, OR DISTRIBUTE MARIJUANA FOR MEDICAL USE, AND DIRECTING THE STUDY OF NEW PROPOSED ZONING AND ORDINANCES TO REGULATE ANY SUCH ESTABLISHMENTS

WHEREAS, on November 2, 2004, Montana voters approved the Medical Marijuana Act, which is codified at Title 50, Chapter 46, Parts 1 and 2, Montana Code Annotated, and at that time and in subsequent legislative sessions the legislature failed to include language or authorize State agencies to promulgate administrative rules concerning a multitude of logistical issues surrounding the Act and the concerns of local governments about its application in their communities and the parameters under which a local government has authority to regulate the effects of the Act; and,

WHEREAS, the Medical Marijuana Act permits the acquisition, possession, cultivation, manufacture, delivery, transfer, and transportation of marijuana or paraphernalia by a qualified patient or a caregiver, as those terms are defined in the Act; and,

WHEREAS, establishments that acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute medical marijuana or paraphernalia are currently registered in the Town of Cascade; and,

WHEREAS, establishments that acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute medical marijuana or paraphernalia could have a blighting or detrimental effect on neighborhoods or on nearby schools or recreational facilities, and can through such blighting effect create a public nuisance; and,

WHEREAS, section 76-2-306, MCA, permits a city or town to adopt an interim zoning ordinance for the immediate preservation of the public peace, property, health, or safety, which interim zoning ordinance may take effect immediately; and,

WHEREAS, State law allows the Town to adopt an interim zoning ordinance to protect public safety, health, and welfare without following the procedures otherwise required preliminary to the adoption of zoning ordinances, and such interim ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal, which the legislative body is considering within a reasonable time; and,

WHEREAS, in municipalities, interim zoning measures may be adopted: (1) when proper zoning procedures have not been satisfied; (2) when some matter of urgency requires zoning to protect public health, safety, and welfare; (3) if the interim measure addresses the urgent matter; and (4) as long as more formal planning processes have been initiated or will be initiated within a reasonable time. The Town Council of the Town of Cascade has determined that all four of the foregoing requirements exist; and,

WHEREAS, the Town Council of the Town of Cascade has determined that the registering, licensing, opening, or operation of any establishments that acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute marijuana for medical use or paraphernalia within the corporate limits of the Town of Cascade, could be immediately detrimental to, harmful to, and a threat to the peace, property, health, safety, and welfare of the Town and its inhabitants, until such time as the Town has had an opportunity to further study the issues and an opportunity to adopt appropriate ordinances, zoning or otherwise, to adequately deal with of any such establishments; and,

WHEREAS, after first having provided lawful public notice, as required by section 76-2-306(2), MCA, the Town Council conducted a public hearing on May 27, 2010, with respect to this proposed Ordinance, and invited public comment.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Cascade, Montana, that:

Section 1: All the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The terms "marijuana," "medical use," "paraphernalia," "qualifying patient," and, "caregiver," have the meaning attributed to those terms by the Medical Marijuana Act.

Section 3: The Town Council hereby directs the Cascade City Planning Board to investigate and study the effect of the opening of establishments that acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute marijuana for medical use or paraphernalia and to make recommendations to the Zoning Commission concerning new zoning ordinances that could be adopted to better regulate, manage, administer, and/or otherwise deal with the effects of such establishments, to limit, prohibit, or abate any negative effect implicating the health, safety, and welfare of the citizenry of the Town of Cascade, Montana, or blight, upon the Town of Cascade, Montana (and its entire zoning jurisdiction and its inhabitants), or the schools, recreational facilities, or neighborhoods located therein.

Section 4: The Town Council hereby directs the Zoning Commission to coordinate with the City Planning Board to investigate, and to present the findings of its investigation and its recommendations to the Town Council, so that the Council may consider the issue within six (6) months of the date of the enactment of this Ordinance.

Section 5: Until such new ordinances, zoning or otherwise, are adopted and in order to manage the issues described above, any establishments attempting to acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute marijuana for medical use or paraphernalia are hereby prohibited from being registered, opened, operated, or licensed within the Town of Cascade. The moratorium and prohibition shall be effective and in force for a period of six (6) months commencing on the date of the

enactment of this Ordinance unless extended as provided for by law. The prohibition shall not apply to a qualifying patient who possesses not more than six (6) marijuana plants and one (1) ounce of usable marijuana solely for that patient's own use, nor shall it apply to an existing caregiver currently registered in the Town of Cascade who possesses not more than six (6) marijuana plants and one (1) ounce of usable marijuana solely for each of his or her qualifying patient's use. During the period of this interim ordinance, the number of plants in an existing caregiver's possession may not exceed the number of plants allowed under the Medical Marijuana Act for the number of qualifying patients, which were registered to him or her on the effective date of this ordinance. Provided that, business establishments attempting to acquire, possess, cultivate, manufacture, deliver, transfer, transport, or distribute marijuana for medical use or paraphernalia in designated residential zoned districts or proposed residential zoned districts will be in conflict with contemplated zoning proposals that prohibit the existence of said business establishments in any district designated residential or proposed to be zoned for residential purposes, and therefore marijuana for medical use related home based businesses or any other marijuana for medical use related businesses in designated residential zoned districts or proposed residential zoned districts are prohibited.

Section 6: The violation of any part of this Ordinance is a misdemeanor and any individual, entity, or establishment that violates the terms of the restrictions set forth above shall be subject to prosecution as provided for in Chapter 1.08 of the Official Code of the Town of Cascade, Montana. It is further provided that violations may be deemed a public nuisance, and may be subject to prosecution in the same manner as one who violates Town ordinances and codes relating to nuisances, and shall be subject to the penalty set forth in section 7.03.080 of the Official Code of the Town of Cascade, Montana. Violators may also be subject to prosecution under the provisions of section 45-8-111, Montana Code Annotated, and shall further be subject to such civil action to enjoin or abate the public nuisance, as the Town deems appropriate. Such ability of the Town to prosecute and/or enjoin or abate is in addition to any other remedies available to the Town, at law or equity.

Section 7: This Ordinance is expressly made retroactive and shall apply to all marijuana for medical use related applications for building permits, zoning variances, conditional use permits, zoning changes, and all other similar applications for building and land use permits, business registrations, business licenses, safety inspections certificates, development activity, land use activity, land use changes, and any other similar applications for approval or any type or nature, which have been received by the Town of Cascade and not yet granted as of the effective date of this Ordinance.

Section 8: In the event any word, phrase, clause, sentence, paragraph, section, or other part of this Ordinance set forth herein is held to be invalid by a court of competent jurisdiction, such judgment shall affect only that part held to be invalid, and the Remaining provisions thereof shall continue in full force and effect.

Section 9: This Ordinance shall take effect immediately upon its adoption by the Town Council of the Town of Cascade, Montana, and signing by the Mayor thereof.

APPROVED by the Town Council of the Town of Cascade on the first reading _____, 2010.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Cascade on the second reading _____, 2010.

William R. Peterson, Mayor

ATTEST:

Jodie Campbell, Clerk/Treasurer

APPROVED AS TO FORM:

Ned R. Jennings, City Attorney